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Secretary

Federal Communications Commission

445 12th Street, S.W., Room 1W-B204

Washington, D.C. 20554

Attn: The Honorable Arthur I. Steinberg
Administrative Law Judge

Re: EB Docket No. 03-152

Dear Ms. Dortch:

On behalf of Richard B. Smith, pursuant to Section 1.223 of the Commission's Rules, there is transmitted herewith, an original and six copies of an Opposition to "Joint Motion to Strike Or, in the Alternative, Response to Consolidated Reply to Oppositions to Petition for Leave to Intervene"

If additional information is necessary, please communicate with this office

Please date stamp the extra enclosed copy and return it to the undersigned

Very truly yours,

Vincent J. Curtis, Jr.

Harry F. Cole

Susan A. Marshall

Counsel for Richard B. Smith

VJC/st

Enclosure

cc: See Certificate of Service

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 24 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EB Docket No. 03-152

In the Matter of)	
)	
WILLIAM L ZAWILA)	Facility ID No 72672
)	
Permittee of FM Station KNGS,)	
Coalinga, California)	
)	
AVENAL EDUCATIONAL SERVICES, INC)	Facility ID No 3365
)	
Permittee of FM Station KAAX,)	
Avenal, California)	
)	
CENTRAL VALLEY EDUCATIONAL)	Facility ID No 9993
SERVICES, INC)	
)	
Permittee of FM Station KAJP,)	
Firebaugh, California)	
)	
H L CHARLES D/B/A FORD CITY)	Facility ID No 22030
BROADCASTING)	
)	
Permittee of FM Station KZPE,)	
Ford City, California)	
)	
LINDA WARE D/B/A LINDSAY)	Facility ID No. 37725
BROADCASTING)	
)	
Licensee of FM Station KZPO,)	
Lindsay, California)	
)	
In re Application of)	
)	
WESTERN PACIFIC BROADCASTING, INC)	File No. BR-19970804YJ
)	Facility ID No 71936
For Renewal of License for AM Station KKFO,)	
Coalinga, California)	
)	
TO: The Honorable Arthur I Steinberg		
Administrative Law Judge		

**OPPOSITION TO
“JOINT MOTION TO STRIKE OR, IN THE ALTERNATIVE,
RESPONSE TO CONSOLIDATED REPLY TO OPPOSITIONS
TO PETITION FOR LEAVE TO INTERVENE”**

1 Richard B. Smith hereby opposes the “Joint Motion to Strike, or in the Alternative, Response to Consolidated Reply to Oppositions to Petition for Leave to Intervene” filed herein by William L. Zawila, Avenal Educational Service, Inc., Central Valley Educational Services, Inc., H. L. Charles d/b/a Ford City Broadcasting, Linda Ware d/b/a Lindsay Broadcasting and Western Pacific Broadcasting, Inc. (collectively, “Zawila”).

2 In his pleading Zawila engages in little more than self-serving speculation served up as argument. Zawila’s primary thrust is that Zawila believes that Mr. Smith was seeking to intervene pursuant to Section 1 223(b), rather than Section 1 223(a). According to Zawila, his speculative belief along those lines mandates that Mr. Smith’s intervention request be assayed under Section 1 223(b) rather than Section 1 223(a).

3 The purely speculative nature of Zawila’s claim is evident from the fact that Zawila is unable to point to any express statement by Mr. Smith that Mr. Smith was seeking to intervene solely as a discretionary matter. At most, Zawila relies on rhetorical questions. But rhetorical questions -- especially blatantly self-serving questions -- are no substitute for facts. The most that Zawila seems to be able to claim is that, because certain portions of Mr. Smith’s petition to intervene look (at least to Zawila) like they seek discretionary rather than mandatory intervention, Mr. Smith must be deemed to have been limiting his request to the discretionary rather than the mandatory.

4 The obvious problem with that “analysis” is that it ignores the fact that intervention under Section 1 223(a) is not necessarily mutually exclusive with intervention under

Section 1.223(b). That is, nothing in Section 1.223(a) prohibits the tendering of information responsive to all or parts of Section 1.223(b). Conversely, the mere inclusion of information seemingly directed to Section 1.223(b) does not necessarily foreclose the applicability of Section 1.223(a). So even if Mr. Smith provided information responsive to Section 1.223(b), that would not mean he was waiving any claim to intervention under Section 1.223(a).

5 At worst, then, Mr. Smith might be accused of engaging in a form of pleading in the alternative, of taking a belt-and-suspenders approach intended to demonstrate conclusively that he can and should be deemed an intervenor herein. Such a conservative approach is not prohibited by the rules.

6. Zawila's arguments – and those of the Enforcement Bureau ("Bureau"), in its separate Opposition to Mr. Smith's Motion for Leave to File Reply – extend beyond the limited question of whether Mr. Smith should be granted leave to file his reply.¹ Both Zawila and the Bureau take the opportunity of their latest pleadings to jockey for the last word on the substantive matter of Mr. Smith's intervention. They both claim that, even if this proceeding *does* involve at least one application (a fact which is undeniable), Mr. Smith cannot intervene under Section 1.223(a) unless he can show that he has a direct interest in that particular application, and, not surprisingly, both also claim that Mr. Smith has not demonstrated a direct

¹ The fact that Zawila, without requesting leave to file a substantive response to Mr. Smith, did so anyway is ironic. Zawila criticizes Mr. Smith for filing a "clearly unauthorized" pleading in a "blatant and transparent attempt by Smith's counsel to gain a second bite of the apple." Zawila Motion at 2. But Mr. Smith, recognizing that he had no absolute right to file his Supplement, expressly sought leave to do so in a separately-filed Motion for Leave to File. For its part, the Bureau appears to have understood the need for seeking leave to file, although it limited its request to a footnote (*see* Bureau Opposition at 7, n. 16). Zawila chose not to seek any leave at all, instead he just grafted his substantive pleading (in effect, a surreply) onto an otherwise unrelated motion to strike. Zawila's unwarranted fulminations about Mr. Smith are more appropriately directed at Zawila himself.

interest in the one application which *is* listed in the caption. *See, e g* , Zawila Motion to Strike at 4, Bureau Opposition at 5-6

7 With all due respect, both Zawila and the Bureau are attempting to narrow the scope of Section 1 223 in a manner unsupported by the language of that section. The rule merely says that in cases “involving” an application – and this case certainly fits that broad criterion – a party is entitled to intervene upon a showing “the basis of its interest” Nothing in the rule imposes the additional pleading requirements which Zawila and the Bureau urge here.

8 Indeed, when it refers to “applications”, Section 1 223(a) does not limit itself to “captioned applications”, nor does it otherwise specify that the applications referenced in that section have to appear at all in the caption of the proceeding in question. In view of the use of the broad term “involving”, it could easily be concluded that the instant proceeding “involves” not only the renewal application of Station KKFO (which is in the caption), but also the “associated applications for license” of, *inter alia*, Station KNGS(FM), applications which are, *according to the first sentence of the Hearing Designation Order*, “before” the Commission in this matter Such a reading would be further supported by the fact that at least three of the issues relating to Station KNGS(FM) involve misrepresentations allegedly made by Zawila *either in a license application or in pleadings filed in connection with a license application*.

9 As to the claim that Mr Smith has no real interest here, that claim borders on the frivolous The nature and extent of his very substantial interest have been clearly articulated already, and need not be revisited here While Mr Smith’s interest is most directly tied to Station KNGS(FM), it is also clearly tied to the ultimate determination of Zawila’s basic qualifications to be a Commission permittee or licensee – and that, quite obviously, is an issue

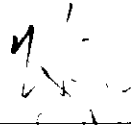
essential to the KKFO renewal application as well as all other applications and authorizations in which Zawila claims an interest

10 And as to the Bureau's suggestion that Mr. Smith "can add nothing" to this proceeding, Bureau Opposition at 10, the Bureau has failed to acknowledge, much less respond to, a crucial point made in Mr. Smith's Consolidated Reply (at 4-5). That is, if the charges in the Hearing Designation Order concerning Station KNGS(FM) prove true, and if Zawila in fact failed to construct the facilities specified in the KNGS(FM) construction permit within the term specified by that permit, then the permit expired by its own terms and there is no authorization left. Cf. *Idaho Broadcasting Consortium*, 16 FCC Rcd 21558 (Mass Media Bureau 2001). That is essentially the same approach which the Bureau has indicated (at the prehearing conference) it intends to pursue with respect to Station KKFO. But the Bureau does not appear intent upon pursuing the same approach relative to KNGS. Mr. Smith *does* intend to pursue precisely that approach with respect to KNGS. And much as the Bureau apparently expects that it may summarily eliminate KKFO from further consideration herein, so too does Mr. Smith expect to summarily eliminate KNGS (as well as any of the other stations as to which that approach may be effective). Mr. Smith can thus be expected to assist in expediting the conclusion of this proceeding.

11 In closing, one final comment concerning Zawila's motion is warranted. Zawila has chosen to use vivid derisive language in an effort to belittle Mr. Smith's pleadings and arguments. Zawila is certainly entitled to do so if he wishes, and we have every confidence that the Presiding Judge will be able to filter out the arguments from the rhetorical noise and act accordingly. But Zawila goes so far as to assert that Mr. Smith is attempting "to insult the intelligence" of the Presiding Judge here. Zawila Motion at 3. Mr. Smith strongly denies that

claim, and assures the Presiding Judge that he is advancing legitimate arguments in the utmost good faith ²

Respectfully submitted,



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 Harry F. Cole, Esq.
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September 24, 2003

² As far as *insulting* anyone's intelligence goes, Mr. Smith is ***not*** the one who has claimed to have built a 300-foot tower which then happened to vanish, supposedly dismantled by meticulous vandals who removed not only the tower itself, but also any trace that the tower had ever been in place – vandals so meticulous that they must also have used a Men-in-Black type memory eraser on people who work near the supposed tower, since those people said they had never seen such a tower at that site. *See* Hearing Designation Order, ¶¶12-14

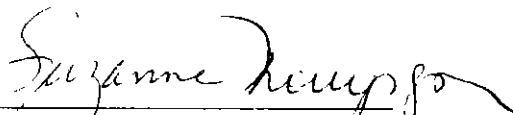
CERTIFICATE OF SERVICE

I, Suzanne Thompson, a secretary in the law firm of Fletcher, Heald & Hildreth, P L C , do hereby certify that a copy of the foregoing "Opposition to 'Joint Motion to Strike Or, in the Alternative, Response to Consolidated Reply to Oppositions to Petition for Leave to Intervene' " was sent this 24th day of September, 2003, by first-class United States Mail, postage prepaid to

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Administrative Law Judge
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Suzanne Thompson